

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

*[Handwritten signatures and initials]*

IN THE MATTER OF AN INVESTIGATION TO	)	CAUSE NO. 38149
DETERMINE THE EXTENT OF REGULATION OF	)	
WIDE AREA TELEPHONE SERVICE (WATS)	)	<u>SEVENTH SUPPLEMENTAL</u>
RESELLERS BY THE COMMISSION PURSUANT	)	<u>ORDER</u>
TO PUBLIC LAW 92-1985, I.C. 8-1-2.6-1,	)	
ET SEQ.	)	APPROVED:

BY THE COMMISSION:

JAN 14 1998

Abby R. Gray, Administrative Law Judge

On January 20, 1988, the Commission issued an Order in the above-captioned Cause, declining to exercise full jurisdiction over the resellers of wide area telephone service ("WATS") and interexchange, intrastate telecommunications services. A supplemental order excluding alternative operator services from consideration in this Cause was issued February 1, 1989, and a second supplemental order was issued on March 11, 1992, which proposed an amendment of the tariff filing requirement established in the January 20, 1988 Order for proposed new services. A third supplemental order was issued on April 8, 1992, which amended the tariff filing requirements. On April 3, 1996, a fourth supplemental order was issued proposing the elimination of the tariff filing requirement. On May 24, 1996, a fifth supplemental order was issued eliminating the tariff filing requirement.

On October 22, 1997, the Commission issued a sixth supplemental Order proposing the elimination of filing requirements for CTAs, mergers, acquisitions, stock issues and transfers and name changes. A hearing was noticed and held on November 18, 1997. Several parties appeared and comments were filed by the Indiana Telecommunications Association ("ITA"), the Telecommunications Resellers Association ("TRA") and the Office of the Utility Consumer Counselor ("OUCC"). ITA also filed a Response to TRA's Comments.

The October 22, 1997 Order stated that the numerous Certificate of Territorial Authority ("CTA") filings have imposed a serious administrative burden upon the resources of the Commission. The purpose of the CTA filing requirement was to monitor the evolution of the market. When the original order in

this Cause was issued, there were five new entrants; currently, there are over 350 certified WATS resellers and interexchange, intrastate telecommunication providers in the State of Indiana. In recognition of the development of the current market condition and the development of competition, it appears that the filing requirements are no longer appropriate. Therefore, pursuant to I.C. 8-1-2.6 et seq., the Commission proposes to further relax the regulation of resellers of WATS and interexchange, intrastate telecommunications services by eliminating the CTA, mergers, acquisitions, stock issues and transfers, and name change filing requirements.

Based upon a review of the official Commission files and the applicable law, the Commission now finds as follows:

1. Commission Jurisdiction. By our Order issued in this Cause on January 20, 1988, we found that we had jurisdiction over WATS resellers, pursuant to I.C. 8-1-2-88 and that we had subject matter jurisdiction to determine the extent to which our jurisdiction would be exercised, pursuant to I.C. 8-1-2.6 et seq.

Pursuant to I.C. 8-1-2-72, the Commission may, at any time, upon notice and opportunity to be heard, rescind, alter or amend its Order issued in this Cause on January 20, 1988.

Therefore, the Commission has jurisdiction over all WATS resellers certificated pursuant to the procedures established in this Cause and to amend filing requirements for telecommunications providers.

The Commission proposes that the provision of WATS and interexchange, intrastate telecommunications services for resale may be accomplished by further declination of jurisdiction by the Commission to allow resellers of WATS and/or interexchange, intrastate telecommunications services, to render such services without requiring formal petitions for CTAs, Mergers, Acquisitions, Stock Issues and Transfers, and Name Changes with the Commission.

2. Comments Filed. ITA's Comments stated it had no objection to and in fact supports the Commission's objective of declining jurisdiction over mergers, acquisitions, securities and debt transactions of resellers of interexchange, intrastate telecommunications services. The ITA also concurs with the

Commission's objective of simplifying certification for WATS and interexchange, intrastate resellers. However, the ITA stated that no telephone company may be authorized to provide telephone services as these terms are defined by I.C. 8-1-2-88, without first being issued a CTA as required by that statute. ITA states the process of applying for and receiving such a CTA should be simplified but the statutory requirement to have a CTA, as opposed to some form of mere registration reflects good public and regulatory policy. Further ITA states a simplified process for the issuance, transfer, modification or surrender of a CTA may and should require reasonable representations and commitments by the possessors of such CTAs and should allow an opportunity for interested parties to request the Commission to investigate and hear evidence if necessary concerning activities of WATS resellers without constituting an unlawful barrier to their entry into the telecommunications marketplace. The ITA suggested the following process for applying for a CTA for Indiana intrastate resale of WATS and interexchange services:

a. The Commission should maintain a current and accurate list of the name and address of each facilities-based local exchange company. The Commission should also maintain a list of each person who has obtained or has an application pending for a CTA to resell WATS or interexchange, intrastate services in Indiana, and the business names under which all such services are offered to the public. These lists should be maintained by the Secretary to the Commission as a public record and should be available on the Commission's Internet Web Page.

b. To obtain a CTA for resale of WATS or interexchange, intrastate services, a verified application should be filed with the Commission's Secretary, in duplicate, in the form attached as Appendix A which includes all names under which the services are to be provided, a description of the services to be provided, a description of the geographic area to be served, and a statement that includes the following: the Applicant has the financial, managerial and technical ability to provide the services; the Applicant will comply with Indiana law and the Commission's regulations; the Applicant will pay the public utility fee required by I.C. 8-1-6; the Applicant has provided a copy of a verified application to each local exchange carrier on the list maintained by the

Commission Secretary and the Applicant will advise any local exchange company of the nature of Applicant's use of such carriers' facilities and to pay such local exchange carrier the lawful Commission approved tariff rates for such services. The address and telephone number of the Applicant's principal place of business and the name and title of the person who can be contacted or served with notices at that address.

c. The CTA requested by the Application should be issued by the Commission without a hearing immediately upon receipt; provided, however, that any person with standing to make a complaint under I.C. 8-1-2-54 may petition the Commission to revoke the CTA if, following notice and hearing, the Commission finds that the holder of the CTA issued pursuant to this procedure no longer satisfies the requirements listed above, or has violated any Indiana law or the provisions of this Order or other applicable orders of the Commission, and such revocation does not have the effect of unlawfully constituting a barrier to the provision of telecommunications services. No person shall request a hearing for the purpose of causing unnecessary delay in the development of a competitive market for lawful telephone services.

d. The telephone company holding a CTA issued by the procedures established by this Order shall notify the Commission within 30 days of any change or additional name by which the services are to be resold pursuant to a CTA and if any change of the Applicant's principal business address or change of name of persons authorized to receive notice on behalf of the holder of the CTA so the Commission may make necessary modifications to its list.

The ITA also filed as Appendix A to its Comments a form that it suggests be used as a verified application for the issuance of a CTA.

The Comments of the OUCC state that even though informational tariffs will no longer be required for resellers, the OUCC believes that timely consumer information is very important, even in highly competitive markets, and as a result the OUCC recommends that the Commission retain its present requirement for resellers that requires the provision of ten days advance notice to each of their subscribers of any changes in rates and charges, by US Mail, First

Class, postage prepaid, pursuant to the Third Supplemental Order issued in this Cause on April 8, 1992. The OUCC states that while the Commission currently requires interexchange, intrastate resellers to also provide thirty days notice to each subscriber of any new service, the OUCC recommends that this requirement be relaxed to ten days notice. The OUCC also recommends that the Commission maintain authority to investigate and process consumer complaints pursuant to 170 IAC 7-1.1-17 regarding resellers. The OUCC states that as competition has developed in interexchange markets, issues such as slamming have increased the number of consumer complaints against resellers and toll providers. The OUCC states it is too early to determine if a more competitive environment will preclude other potentially serious complaints related to interexchange services, such as blocking, transmission problems, billing issues, and inadequate, untimely consumer information.

The OUCC also states that given the lack of competition for intraLATA toll services in Indiana, the non-existence of toll dialing parity is widespread throughout Indiana. The OUCC states that Ameritech is protected by the Telecommunications Act of 1996 ("TA96") from providing toll dialing parity to other toll providers until it is able to provide interLATA services or until 1999 whichever is sooner. The OUCC states that at present the OUCC understands that Ameritech Indiana does not provide intraLATA toll dialing parity in any of its exchanges, which could collectively amount to more than 50% of the local exchange lines in Indiana. The OUCC opposes any action by the Commission which would attempt to limit the ability of the OUCC to represent its clients in matters involving resellers or other interexchange carriers. Therefore, the OUCC states that given the lack of pervasive competition in the total interexchange market and the consumer problems that still persist is too early for the Commission to withdraw its authority over consumer complaints regarding the activities of resellers.

Further, the OUCC states that according to TA '96 and associated FCC orders, telecommunications companies that provide or resell interstate services to end users must contribute to universal service support. Currently in Indiana, telecommunications companies providing service with annual revenues of at least \$10,000,000 are designated contributors to the Indiana High Cost Fund to help support high cost companies. Moreover, the

OUCG states that discussions and technical conferences of Cause No. 40785 indicate that state funding of universal service support in Indiana may soon be similar to funding mechanisms in the interstate jurisdiction. The OUCG states that the Commission should retain authority to require the resellers of Indiana interexchange services to help fund universal service in Indiana and that relaxation of Commission regulation of resellers requires close scrutiny so that the public interest is not adversely impacted. The OUCG states that it would be much easier in the future to further relax regulation of resellers than to deregulate now and then attempt to reregulate if the Commission determines that resellers should contribute to the fundings of universal service. The OUCG concludes that generally, it does not object to the Commission's streamlining registration and certification procedures and relaxing its regulation of resellers to the extent that the OUCG's proposed requirements above are not compromised. However, the OUCG states that it believes that the current requirements of applying for and receiving a CTA to provide telecommunications service establishes a standard for reputable telecommunications companies to be operating in Indiana and provide a specific identity for the Commission to contact concerning consumer complaints, universal service support, and utility fees. Finally, the OUCG states that if its suggested revisions to the Commission's proposal are not adopted, then the OUCG supports the continued use of CTAs under present market conditions for the certification of resellers.

The Comments filed by the TRA state that it enthusiastically supports the Commission's proposed relaxation of CTAs and transaction authority requirements but also urges the Commission to further institute an electronic CTA and transaction authority registration filing process contemporaneously with adoption of the proposed streamlined registration requirements. TRA states that historic regulatory approaches are no longer necessary or appropriate in today's ultra-competitive interexchange market and a meaningfully competitive market, such as Indiana's interexchange market - now populated by more than 350 resellers - no longer warrants the same level of regulatory scrutiny appropriate in monopoly-based and emerging competitive markets. TRA states that perpetuation of many traditional regulatory requirements such as those governing submission of petitions for CTA and transaction authority, and fully competitive markets contributes marginally, if at all, toward promoting the public interest, yet the continuation

of such unnecessary regulatory requirements consume valuable Commission resources. TRA states institution of a streamlined registration process in no way dilutes the Commission's authority and that the Commission clearly will continue to maintain full jurisdiction over resellers operating in Indiana. TRA states that the proposed relaxation of CTA and transaction authority requirements is appropriate for Indiana's effectively competitive interexchange market, is entirely consistent with the Commission's authority pursuant to I.C. 8-1-2.6-3, does not subvert the Commission's jurisdiction over resellers, and should be adopted. TRA further states that in adopting the proposed reseller registration requirements, the Commission should further implement a web-based electronic registration process as an option to conventional submission of letters of registration to the Commission. TRA states that the simplicity, economy, utility and efficiency of electronic communication over the world-wide web has become readily evident and that a web-based registration process offers resellers a simplified alternative process for timely registration while providing the Commission an effective method to compile and review registration data with a minimum expenditure of resources. Electronic registration further serves to ensure that all relevant data is provided to the Commission through an automated process that verifies that all critical registration data is provided before an electronically submitted registration form can be accepted and that an electronic registration process minimizes administrative processing and potential processing delays while providing an efficient method for automatically confirming Commission receipt of registrations. TRA states that the Public Service Commission of Montana adopted the web-based electronic registration process and attached a copy of the Montana Commission's registration form to its Comments.

ITA also filed a Response to the TRA's Comments. The ITA opposes TRA's recommendation of an electronic registration process in that the ITA believes that a certification, rather than a registration process is required by I.C. 8-1-2-88, and that a CTA in a form that may be relied upon as proof of certification and public utility status by Indiana governmental entities such as zoning authorities, purchasing officers, etc. should be issued. Additionally, the electronic filing suggested by TRA would not give sufficient notice to other telecommunication carriers. With respect to the information the TRA recommended be furnished to the Commission as part of the certification process, the ITA believes

that some of that information may indeed be helpful to the Commission and be in the public interest. Therefore, the ITA recommends that in addition to the information the ITA recommended be furnished to the Commission with an application for a CTA, the following additional information be furnished as recommended by the TRA: the name, address, telephone numbers, etc. of the parent company; the names, addresses, telephone numbers, etc. of all subsidiary or affiliate companies providing telecommunications services; whether any court or state or federal regulatory agency taken formal action against the applicant that resulted in any type of penalty or sanction within the last five years and if, a description of the actions taken and the sanctions imposed; and the name of applicant's agent for service of process in Indiana.

3. **Filing Elimination Proposal.** The Commission may, pursuant to I.C. 8-1-2.6-2, on its own motion, enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over telephone companies or certain telephone services. The Commission has found in previous orders that the reseller market is competitive pursuant to I.C. 8-1-2.6 et seq.

The Commission proposed in its October 22, 1997 Order that the approval processes for resellers of WATS and interexchange, intrastate telecommunications services have become an unnecessary administrative burden to the Commission. The Commission proposed to decline its jurisdiction over resellers of WATS and interexchange, intrastate services for approval of transactions pursuant to I.C. 8-1-2-77; -78; -79; -80; -82; -83; -84; and -88, which involve mergers, acquisitions, stock issuance and transfer, name changes and CTAs.

Also, pursuant to I.C. 8-1-2.6-3, the Commission may, on its own motion, adopt rules or by an order in a specific proceeding provide for the development, investigation, testing, and utilization of regulatory procedures or generic standards with respect to telephone companies or services. That statute also states that the Commission shall adopt the rules or issue an interim order only if it finds, after notice and hearing, that the regulatory procedures or standards are in the public interest and promote one or more of the following: (1) telephone company cost minimization to the extent that a telephone company's quality of



service and facilities are not diminished; (2) a more accurate evaluation by the Commission of a telephone company's physical or financial conditions or needs, as well as a less costly regulatory procedure for either the telephone company, its consumers, or the Commission; (3) development of depreciation guidelines and procedures that recognize technological obsolescence; (4) increased telephone company management efficiency beneficial to consumers; (5) regulation consistent with the competitive environment.

Further, the administrative functions thereunder are flexible and therefore the Commission proposed that the requirement for new entrants to file a petition for a CTA to resell WATS and interexchange, intrastate telecommunications services and the requirement of petitions for approval of mergers, acquisitions, stock issues and transfers, and name changes are unnecessary and that the public interest would be served by eliminating the formal filing requirements.

However, the Commission further proposed to require new entrants desiring to resell WATS and interexchange, intrastate telecommunications services to file letters of registration with the Commission's Telecommunications Division prior to providing services. Further, it was proposed that current CTA holders or future providers who change their name, merge, issue or transfer stock or are acquired by another entity should also be required to file letters of registration with the Commission's Telecommunications Division.

4. **Commission Findings.** After the hearing and reviewing the comments, we find it appropriate to modify our original proposal as set forth in the Sixth Supplemental Order of October 22, 1997. The first modification is that we find it appropriate for the Commission to continue issuing CTAs to resellers rather than the proposed letters of registration. However, we find I.C. 8-1-2-6 et seq. grants us the authority to streamline the procedures for obtaining CTAs and other transaction authority. Also, we find that the procedures we set forth herein should be administered by the Telecommunications Division of the Commission rather than the Secretary's Office. We also find our original proposal for the various transaction authorities should be modified to include voluntary cancellation of CTAs.

To simplify the process, the Commission finds that the form attached hereto should be utilized as an application for a CTA, and modified appropriately for the other transaction authority, and filed with the Commission's Telecommunications Division.

Regarding the concerns filed by the OUCC, nothing in this Order should be construed as limiting our jurisdiction over resellers of WATS and interexchange, intrastate telecommunications services for consumer complaints or universal service issues, including, but not limited to, the authority to require any resellers of WATS and interexchange, intrastate telecommunications services to contribute to the Indiana High Cost Fund or any other universal service fund or funding mechanism this Commission may establish. Further, we find that resellers should be required to give ten days advance notice to their subscribers of any changes in their rates and charges.

We want to be very clear that resellers of WATS and interexchange, intrastate telecommunications services are public utilities as defined by the Public Service Commission Act, as amended, and as such, are subject to continuing jurisdiction of the Commission and should continue to comply with Indiana laws and applicable Commission regulations and orders.

For ease of administration, Petitions currently on file should conclude with issued orders. However, beginning tomorrow, January 15, 1998, no new petitions should be assigned cause numbers, and should be forwarded to the Telecommunications Division of the Commission for processing as outlined herein.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Pursuant to I.C. 8-1-2.6 et seq., the Commission hereby further relaxes its jurisdiction over resellers of WATS and interexchange, intrastate telecommunications services for approval of transactions pursuant to I.C. 8-1-2-77; -78; -79; -80; -82; -83; -84; and -88, consistent with the findings herein.

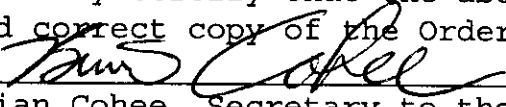
2. The Commission hereby directs the Telecommunications Division to be the repositor of applications for CTAs or any other transaction authority including mergers, acquisitions, stock issues and transfers, name changes, and voluntary cancellation of CTAs.

3. This Order shall be effective on and after the date of its approval.

MCCARTY, HUFFMAN, KLEIN, SWANSON-HULL AND ZIEGNER CONCUR:

APPROVED: JAN 14 1998

I hereby certify that the above is a true and correct copy of the Order as approved.

  
\_\_\_\_\_  
Brian Cohee, Secretary to the Commission  
and Executive Director

## APPENDIX A

### VERIFIED APPLICATION FOR ISSUANCE OF A CERTIFICATE OF TERRITORIAL AUTHORITY TO RESELL WIDE AREA TELEPHONE SERVICE AND INTEREXCHANGE INTRASTATE TELECOMMUNICATIONS SERVICES WITHIN INDIANA

To the Telecommunications Division of the Indiana Utility Regulatory  
Commission:

\_\_\_\_\_(Applicant) hereby  
applies to the Indiana Utility Regulatory Commission for a Certificate of  
Territorial Authority ("CTA") to resell wide area telephone services and  
interexchange, intrastate telecommunications services in Indiana, and  
represents that:

1. Applicant's name, principal business address and telephone number,  
the state where Applicant was organized, its form of organization,  
and all names under which Applicant will do business in Indiana  
pursuant to the CTA requested are as follows:  
\_\_\_\_\_  
\_\_\_\_\_
2. Name, business address and telephone number of Applicant's parent  
company:  
\_\_\_\_\_
3. A description of the service(s) Applicant requests authority to  
provide is as follows:  
\_\_\_\_\_  
\_\_\_\_\_
4. Applicant requests a CTA for the following geographic area:  
\_\_\_\_\_  
\_\_\_\_\_
5. Applicant further represents that:
  - a. Applicant has the financial, managerial and technical  
ability to provide the services for which it hereby requests  
a CTA;
  - b. Applicant will comply with Indiana laws and the Commission's  
regulations and orders of generic application concerning the  
resale of WATS and interexchange, intrastate  
telecommunications services in Indiana which do not  
constitute an unlawful barrier to entry into the  
telecommunications marketplace for such service;
  - c. Applicant will pay the public utility fee requires by I.C.  
8-1-6;
  - d. Applicant has provided a copy of this verified application  
to each facilities-based local exchange telephone company

- (“LEC”) on the list of such companies as maintained by the Commission’s Telecommunications Division;
- e. Applicant will advise any such LEC of the nature of applicant’s use of such LEC’s facilities and pay such LEC the lawful Commission approved tariffed rates for such services; and
  - f. Applicant will notify the Commission within thirty (30) days of any changed or additional name under which it will provide services, and of any change of address of Applicant’s principal business address or change of name of persons authorized to receive notice on behalf of the Applicant.
6. The name, title, address and telephone number of a person authorized by the applicant to receive notices under this section are as follows:

\_\_\_\_\_  
\_\_\_\_\_

**VERIFICATION**

I affirm under the penalties of perjury that the foregoing representations are true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

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\*

**CERTIFICATE OF TERRITORIAL AUTHORITY**

A Certificate of Territorial Authority to provide public utility service (as defined by I.C. 8-1-2-1) and telephone service as a telephone company (as those terms are defined by I.C. 8-1-2-88) as set forth in the foregoing application is hereby issued to \_\_\_\_\_  
to resell wide area telephone services and interexchange, intrastate telecommunications services in accordance with and subject to the provisions of the Indiana Utility Regulatory Commission’s Orders in Cause No. 38149, and the process established by the Seventh Supplemental Order issued on January 14, 1998 in that Cause.

\_\_\_\_\_  
Indiana Utility Regulatory Commission

\_\_\_\_\_  
Date